



ATTACHMENT		A
This forms part of application		
# A25-0004		
Planner Initials	TC	 City of Kelowna DEVELOPMENT PLANNING

Provincial Agricultural Land Commission - Applicant Submission

Application ID: 103177

Application Type: Non-Adhering Residential Use within the ALR

Status: Submitted to L/FNG

Name: Bains

Local/First Nation Government: City of Kelowna

1. Parcel(s) Under Application

Parcel #1

Parcel Type Fee Simple

Legal Description THE WEST 1/2 OF LOT 5 SECTION 10 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 355

Approx. Map Area 5.62 ha

PID 008-554-013

Purchase Date Nov 1, 1979

Farm Classification Yes

Civic Address 3496 Fitzgerald Rd, Kelowna, BC, V1W 4G7

Certificate Of Title state of title certificate_Jan 2025.pdf

Land Owner(s)	Organization	Phone	Email	Corporate Summary
Paramjot Bains	Not Applicable	2508996885	mizzbains@gmail.com	Not Applicable

2. Other Owned Parcels

Do any of the land owners added previously own or lease other parcels that might inform this application process? No



3. Primary Contact

Type Land Owner
First Name Paramjot
Last Name Bains
Organization (If Applicable) No Data
Phone 2508996885
Email mizzbains@gmail.com

4. Government

Local or First Nation Government: City of Kelowna

5. Land Use

Land Use of Parcel(s) under Application

Describe all agriculture that currently takes place on the parcel(s).

We have a total of 13.87 acres, including our current residential house, which measures less than the allowable 500 m2, and an additional farm house, currently unused, with a total area of only 102 m2. There is only outdoor space for farm machinery at the moment.

In terms of farm use, we have approximately 12 acres of cherries, 4 different varieties (Skeena, Sweetheart, Staccato, Sentennial).

Our season starts in the late autumn/early winter with winter pruning, followed by minor thinning of the buds in the spring. This is followed by a multitude of pesticide sprays throughout the spring and early summer, followed by cherry harvest (picking) in July and August. It is a very busy 7 or 8 months, but also very fruitful.

Describe all agricultural improvements made to the

This orchard previously grew apples. The apple trees at the back of the original farm house (approximately 8 acres) were pulled out in 2003, and

parcel(s).

cherry trees (varieties: Skeena, Sweetheart and Staccato) were planted. The apples trees in front of the original farm house (approximately 4 acres) were pulled out in 2010, and cherry trees (variety: Sentennial) were subsequently planted.

The cherry crop has been much more lucrative for us than the apple crop ever was. The Sentennial crop is the most lucrative. We have continued to follow advice from our horticultural consultant every season regarding sprays, fertilizers, etc., and our fruit has been of very high quality for the last 6 seasons. As a result, we have been able to take part in an International Cherry Export Program.

We have updated most of our farm machinery and equipment, as per industry standard, to ensure each activity in the season runs smoothly and we are following all of the latest guidelines. This includes a relatively new tractor, sprayer, blower (to blow rainwater off cherries), pruning sheers, ladders, new plastic buckets. The irrigation system was updated in 2003 and 2010. Continual updates have been made to it over the last 15 years.

Describe all other uses that currently take place on the parcel(s).

I currently reside in the 500 m2 new home built on the premises in 2021, along with my husband, son, mother and father (multigenerational home). The original farm house, which was built in 1910, and historically moved to this site from another site in 1950ish) also sits directly in front of the new house (same footprint). This house was extended in 1966. Despite this, the size of the house is only 102 m2. The basement is unfinished. The garage (ground level of house) stores much of our smaller equipment, including buckets, pruning sheers, smaller farm equipment.

There is parking for our personal cars, as well as our farm machinery at the front of the original farm house. We also have a large vegetable garden at the side of the farm house, where a yard would normally be.

Land Use of Adjacent Parcels

	Main Land Use Type	Specific Activity
North	Agricultural / Farm	Apple and Cherry Orchard
East	Agricultural / Farm	Apple Orchard
South	Agricultural / Farm	Cherry Orchard
West	Agricultural / Farm	Apple and Cherry Orchard

6. Proposal

Is your proposal for a principal residence with a total floor area greater than 500 m²? No

Is your proposal to retain an existing residence while building a new residence? No

Is your proposal for an additional residence? Yes

Is your proposal for temporary foreign worker housing? No

Do you need to import any fill to construct or conduct the proposed non-adhering residential use? No

What is the purpose of the proposal?

The proposal is to retain the original farm house, our original family home, for the purposes of residential use. As it currently exceeds the allowable 90 m² restriction (102 m²), we have been asked to submit an application for non-residential use. Otherwise, our current local authority supports this application.

The proposal is to retain 83.06 m² of the property for residential use, and the remaining 18.94 m² of the property for farm use/storage. Please see attached floor plan indicating that the side 2 rooms of the house will be used for farm related purposes (storage and summer office). These rooms were part of an extension added to the house in the 1950s, and are not fit for living due to absence of insulation, heating and plumbing. The 83.06 m² of living space includes 1 bedroom, and is fit for living. We propose building a dividing wall between the residential part of the building and the part that will be used for farm use (extension). There is currently a doorway between these 2 parts of the house that can be either locked or blocked off.

We have looked into demolition of the 18.94 m² extension, but given the age of the building, this has not been advisable by several builders, as it may affect the integrity of the original structure.

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Is your proposal necessary for farm use? If so, please explain.

Our proposal is necessary for farm use, as we currently have no adequate farm storage. There are no other outbuildings on the property to store valuable farm equipment and machinery, other than the garage of the original farm house. We could use the 18.94 m² to create a much-needed farm office, and store farm equipment in a more practical and organized way than has been possible to date.

Will the proposed residence(s) be clustered with existing residential structures? Please explain.

Yes, the new house and original farm house sit on the same residential footprint (clustered), and are only separated by 2-3 meters of lawn.

Will the proposed residence(s) be located within a 60 m setback from the front lot line? Please explain.

The original farm house sat between the front and back orchard since 1952, and is separated by an easement road that served as a driveway. The new house was built on the same footprint, sitting just behind the original farm house.

Where on the parcel will the proposal be situated and is there an agricultural rationale for the proposed location?

The original farm house sits within 1 meter of an easement road, that acts as a driveway, and divides the property between the 4 acre front orchard, and 8-9 acre back orchard. The new house sits directly behind the original farm house, on the same footprint, and together these 2 houses and residential footprint/covenant does not exceed the allowable 3000 m² (City of Kelowna requirements - 2000 m² for new house and 1000 m² for secondary residence).

Describe any infrastructure required to support the proposed residence(s) and the approximate area (m²) required for that infrastructure

No additional infrastructure is required. The property is already constructed and has been on the property since at least 1950. It is a historic property, and with the loss of so many beautiful farm houses around East Kelowna, it would be a shame to demolish it. Our proposal only requires a wall/cordoned off door to the residential component of the building (83.06 m²) and the farm use component of the building (18.94 m²).

Proposal Map / Site Plan

3496 Fitzgerald Road - Proposal Map.jpg.pdf

Detailed Building Plans

Floorplan - Second residence_farm storage.pdf

Existing Residence**Total Floor Area****Description**

#1

500m²

37 m² for garage 185 m² for basement

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Proposed Residence	Total Floor Area	Description
#1	83.06m ²	Not applicable, as these areas are not habitable. 18.96 m2 for an extension at the side of the house, to be used for farm-related activity.

7. Optional Documents

Type	Description	File Name
Other files that are related	Letter of support	Letter of support for NARU.pdf

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Second residence/farm storage

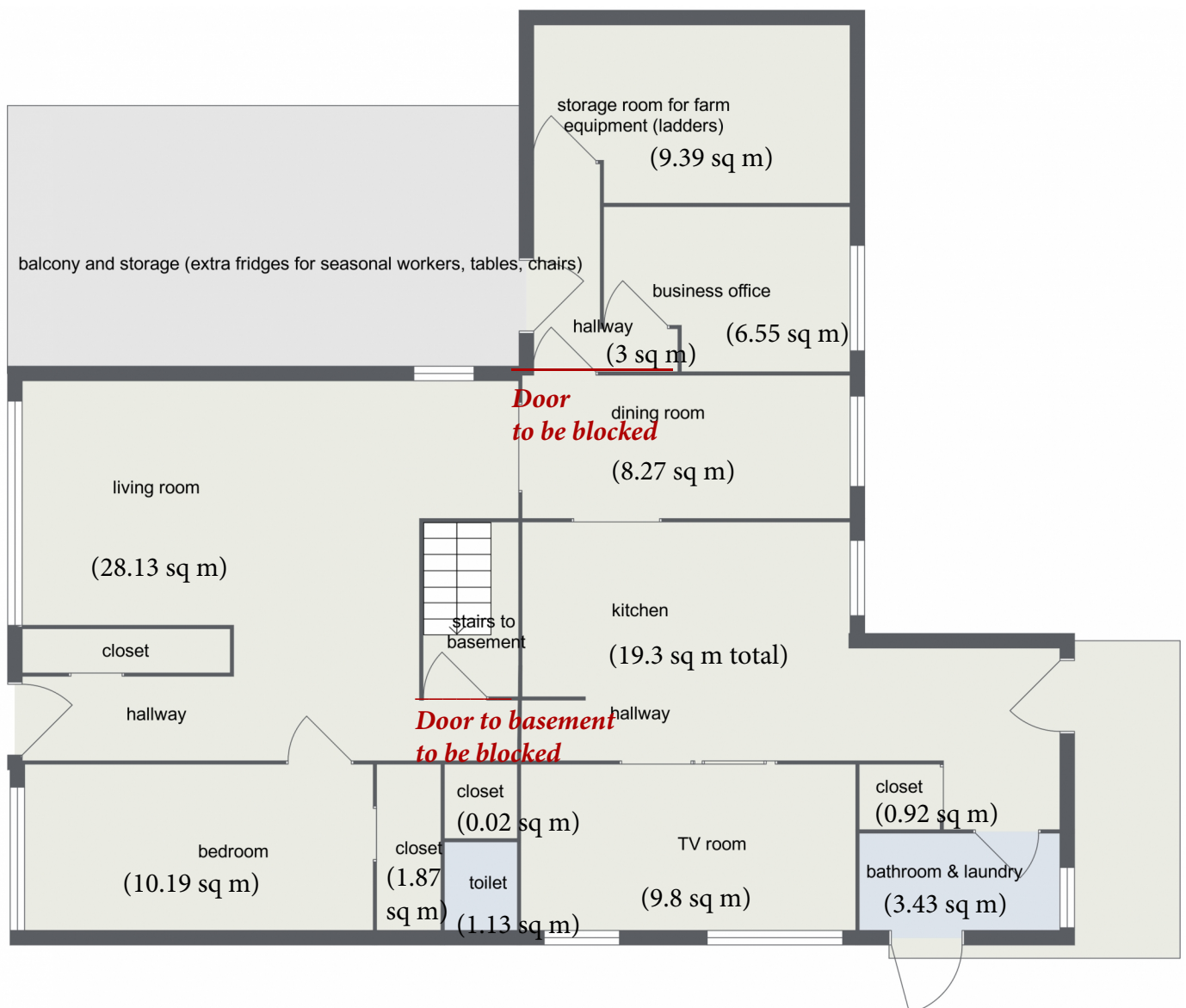
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1. Floor



Total sq meters for entire dwelling =
102 sq meters

Total sq meters for living area =
83.06

Total sq meters for farm use = 18.94

10 January 2025

To Whom It May Concern:

I have submitted a new Non-adhering Residential Use Permit in order to keep 83.06 m² of our original farm house for residential use. This is a new application, and supersedes previous applications.

To recap, in July 2020, the Panel approved the proposal (ALC application 60408; Resolution #345/2020) for us to construct a 500 m² (5,400 ft²) new principal residence (the "New Residence") on the Property and allow us to continue to occupy the 102 m² (1,100 ft²) current residence (the "Existing Residence") until the New Residence was completed (the "Proposal"); and decommission the Existing Residence for conversion into a fruit stand and farm equipment storage structure subject to the following conditions:

- a. The registration of a covenant in favour of the Commission for the purpose of ensuring the Existing Residence is decommissioned within 60 days of occupancy of the New Residence, and for prohibiting residential use of the Existing Residence following its decommissioning;
- b. Replanting of cherry trees around the Existing Residence;
- c. Siting of the New Residence in accordance with Schedule A;
- d. Approval for non-farm use is granted for the sole benefit of the Applicant and is non-transferable.

Since the above decision was made in July 2020, considerable new changes have been made which significantly impact us and our original proposal. On 12 July 2021, our Minister of Agriculture, Lana Popham, signed an executive order, outlined in OIC 438/2020, stating:

34.3 (1) The use of agricultural land for an additional residence for which construction begins after December 30, 2021 is permitted on a parcel if all of the following conditions are met:

- (a) at the time that construction begins, the parcel has located on it only one residence, whether or not a secondary suite is located in the residence as permitted under section 31;
- (b) neither residence will be attached to, nor be part of, the other residence;
- (c) one of the following applies to the residences, as constructed:
 - (i) if the parcel is 40 ha or less, there will be
 - (A) one residence, the total floor area of which is 500 m² or less, and
 - (B) one residence, the total floor area of which is 90 m² or less;

As such, I had submitted a **Reconsideration Request** in November 2021: For decisions made after March 12, 2020, when considering the above, the Commission can only reconsider a decision if the decision-making body determines that:

1. (a) New evidence has become available that was not available at the time of the original decision that could not have been obtained earlier through the exercise of due diligence; ALCA: s. 33(2)(c)(i);

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This request was denied, and we were asked to submit a new application altogether in June 2022.

We then sought expert consultation over the course of the next 18 months, which proved to be unsatisfactory. Subsequent to this, my grandmother and mother-in-law both passed away.

We met with the City of Kelowna planners/consultants in June 2024. They indicated that they would support our application for retaining our original farm house for residential use, but given that it is larger than the required 90 m², it would require some modification to fit within this criteria. They recommended we proceed with a new Non-adhering Residential Use Permit.

We have complied with all requirements from the original ALC decision. However, our final occupancy permit with the City of Kelowna will not be issued until the status of this secondary dwelling is concluded. In addition, we paid a \$20,000 bond to City of Kelowna in 2020, which will not be released until this conclusion. The City of Kelowna also requires a road covenant/road reserve, which our lawyers have been working on due to the complexity.

We understand that it has taken us a considerable time to submit this application, which we can only attribute to our busy farming schedule, family illness/deaths, and my busy schedule as a medical oncologist.


We sincerely appreciate your consideration of this application.

Please contact me if any further supporting documentation is required.

Sincerely,



Dr. Param Bains
Medical Oncologist
Owner/operator Bains Orchards Inc

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CITY OF KELOWNA

MEMORANDUM

Date: March 31, 2025
File No.: A25-0004
To: Development Planning Dept (TC)
From: Development Engineering Dept
Subject: 3496 Fitzgerald Rd

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Non-Farm Use

The Development Engineering Department has the following comments associated with this Agricultural Application for a Non-Adhering residential Use Permit Application to allow for the existing dwelling to remain.

The Development Engineering Technologist for this file is Chris Pedersen (cpedersen@kelowna.ca).

1. SITE-SPECIFIC REQUIREMENTS

- a. The comments and requirements outlined in the Development Engineering memo for file A20-0002 for this project have not been met.
- b. 10 m road dedication along the entire frontage of Pooley Rd is required to achieve a ROW width of 20 m in accordance with OCP Functional Road Classification objectives and Bylaw 7900 Typical Road Sections.

2. DOMESTIC WATER AND FIRE PROTECTION

- a. The subject property is located within the City of Kelowna Water Supply Area. Our records indicate that this property is currently serviced with a 19 mm diameter water service off Fitzgerald Rd, serviced through the SRW M52095 in Plan A12333.
- b. The existing service is undersized for the proposed development and needs to be upgraded. The Developer, at their cost, must arrange for the installation of one new larger water service and the full decommissioning of any obsolete services at the main. The water main on Fitzgerald Rd and in the SRW M52095 in Plan A12333 is 50 mm diameter and does not have enough capacity for an upgraded service to this property. This property has two options to provide water servicing from the water main network:
 - i. Disconnect the existing water service from the SRW M52095 in Plan A12333 at the property line of 3496 Fitzgerald Rd and install a new connection to the 100 mm diameter domestic water main on Pooley Rd, with approximately 350 m of water service line construction through the farm land to the house; or
 - ii. Convert the existing water main in the SRW M52095 in Plan A12333 to a water service by discharging the SRW M52095 and charging a new SRW to only include shared

infrastructure adjacent to Fitzgerald Rd and charging a new easement to include the private water service only to 3496 Fitzgerald Rd.

- c. If the Developer chooses to continue with Option 2.b.i, the Developer can choose to either engage a Consulting Engineer and a qualified Contractor to design and construct the service upgrades within the road right-of-way or they can choose to have the works completed by City forces at the Developer's expense. If the Developer chooses to have the works completed by City forces, they will be required to sign a Third-Party Work Order and pre-pay for the cost of the work. For estimate inquiries please contact the Development Engineering Technologist assigned to the file.
- d. A water meter is mandatory for this development and must be installed inside a building on the water service inlet as required by the City Plumbing Regulation Bylaw 5968-87.

3. **DESIGN AND CONSTRUCTION OF OFFSITE WORKS**

- a. Offsite Works and Services are required of this development as outlined above. The Developer must Design and enter into a Servicing Agreement and provide security for the Construction of the Works prior to issuance of Building Permit.
- b. Design of all offsite works and site servicing must be completed in accordance with Subdivision, Development, and Servicing Bylaw No. 7900 and is subject to the approval of the City Engineer prior to construction or execution of a Servicing Agreement.
 - i. See Bylaw 7900 Sections 6.0, 7.0, and 9.0, as well as Schedule 4 for procedural guidance, approval requirements, and design standards.
 - ii. Design must be completed by a suitably qualified and experience Consulting Engineer.
 - iii. Engineering drawing submissions are to be in accordance with *Council Policy 265 – Engineering Drawing Submission Requirements*. Drawings must be submitted digitally in PDF format and sealed in accordance with EGBC Guidelines.
- c. A Servicing Agreement is required for all Works and Services on City lands (Offsite Works).
 - i. The Servicing Agreement must be in the form of Schedule 2 of Bylaw 7900.
 - ii. The Developer's Consulting Engineer, prior to preparation of a Servicing Agreement, must provide adequate drawings and estimates for the Works to the City Engineer.
 - iii. Bylaw 7900, Part 3 – Security for Works and Services, Sections 7.1 - 7.2, describes the Security requirements of an Owner for entering into Servicing Agreements. Security must be in the form of an irrevocable letter-of-credit, bank draft, or certified cheque.
- d. Construction of the required Works and Services must be completed in accordance with Bylaw 7900 requirements and is subject to several approvals prior to work commencing. These include, but are not necessarily limited to, the following:
 - i. Before any construction of the Works commences, design drawings must be reviewed and approved for construction by the City Engineer.
 - ii. A "Consulting Engineering Confirmation Letter" (City template provided upon request) must be executed by the Owner and Consulting Engineer and provided to the City.

- iii. The Developer's Consulting Engineer must undertake adequate inspections during construction of the Work, as outlined in EGBC's *Guide to the Standard for Documented Field Reviews During Implementation or Construction*. A Quality Control and Assurance Plan acceptable to the City Engineer must be submitted prior to construction approval. Refer to Bylaw 7900, Schedule 3.
- iv. Insurance requirements are outlined in Bylaw 7900, Section 7.3. A compliant Certificate of Insurance must be provided prior to construction approval.
- v. Contractor must provide a current WorkSafe BC Clearance Letter.
- e. Construction completion, maintenance period, and return of Performance Security requirements are outlined in Bylaw 7900, Sections 9.5 - 9.7 and Sections 10.0 - 10.4.

4. **CHARGES, FEES, AND SECURITIES**

- a. Engineering and Inspection Fee:

3.5% of Construction Value	\$	TBD
5% GST	\$	TBD
TOTAL	\$	TBD

M Hobbs

Melissa Hobbs, P.Eng, PMP
Development Engineering Dept.

CP

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